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Acacia: The Company Tech Loves to Hate

By Rachael King on February 01, 2010

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With the most patent-infringement cases against tech giants, Acacia Research is often called a "patent troll." Inventors hail it as a savior

(This story was corrected to include a statement from Rates Technology Inc. in the seventh paragraph and one from PatentFreedom in the eighth paragraph.)

For a company that makes no products, Acacia Research (ACTG) spends a lot of time fighting over patents in court. Acacia has filed at least 337 patent-related lawsuits in its 18 years. To make money—sales are expected to rise to \$68.8 million this year, from \$34.8 million in 2006—Acacia acquires patents from inventors and then seeks fees from companies that it says infringe on those patents. Because Acacia licenses technologies it doesn't design or distribute, it is known as a "nonpracticing entity." Executives at many tech companies—and their investors—call Acacia and its peers a different name: "patent trolls." "We're on the very front end in an explosion of frivolous litigation that's going to put a damper on innovation," says Brad Burnham, a partner at venture capital firm Union Square Ventures, who says about one-third of his firm's portfolio is being targeted by patent trolls. Critics say trolls assert patents that are too broadly defined or that cover ideas that existed before the patent was granted. Many say the entire U.S. patent-granting system needs reform. But for inventors who by themselves can't take tech companies to court over meaningful innovations, the Acacias of the world may play a vital role. Beginning in the late 1970s, airline pilot Paul Ware devised a system for protecting credit-card transactions against fraud and then spent \$20,000 of his own money to obtain a patent that was granted in 1987. He spent the next several years trying unsuccessfully to get funding to make a product. It wasn't until 2004, when a small nonpracticing entity later acquired by Acacia obtained his patent, that Ware was able to start collecting licensing fees. "I wouldn't have gotten a dime because I was going about it the wrong way," says Ware, who says his product has been licensed to 80 different companies. "like neighborhood bullies"

Acacia is unquestionably litigious. The company has filed more than twice the number of lawsuits as Rates Technology, which ranks second in the number of patent cases filed, according to PatentFreedom, which researches nonpracticing entities. Acacia says it reaches out-of-court settlements in roughly 95% of the lawsuits it files, such as that on Jan. 25, when Microsoft (MSFT) agreed to license an Acacia subsidiary's technology used to provide geographical information for Internet maps. In cases that go to trial, Acacia wins about half the time, says Acacia CEO Paul Ryan. Rates Technology President Gerald Weinberger said PatentFreedom's statistics are "misleading" and that his company should not be characterized as a non-practicing entity or as a "patent troll." "Patent Trolls are those entities who among other things purchase patents from others, and who then oppressively litigate those patents; RTI enforces only two patents each of which cover patented technology co-invented by its president," Weinberger said in an e-mailed statement. PatentFreedom said Rates Technology "is clearly distinguishable from many NPEs which primarily—or exclusively—base their enforcement activities on patents either purchased from others or from which they have obtained enforcement rights." In terms of the number of defendants sued, Rates Technology ranks 17th among entities tracked by PatentFreedom, and when

ranked in terms of litigation since 2004, Rates Technology ranks No. 10, according to PatentFreedom.

For those that prevail against Acacia, victory can be sweet. "Patent trolls are like neighborhood bullies," said Robert J. Shillman, CEO of machine vision-system maker Cognex (CGNX), in 2008 at the end of a struggle his company had won. "They can only be stopped by standing up to them, refusing to settle, and then challenging their patents in court."

At the same time, nonpracticing entities can help bring transparency to an inefficient market whose price for patents is shrouded in nondisclosure agreements, says James Malackowski, CEO of Ocean Tomo, an intellectual-property consulting firm. "We're transitioning from a period of feudal lords where the only people who cared about intellectual property were large property owners who talked about it among themselves," Malackowski says. "There's been angst over patent trolls but it is not justified by materiality of economics." Patent-infringement cases cost an estimated \$1 billion to \$2 billion a year, a small fraction of the trillions of dollars companies spend each year on cross-licensing deals, Malackowski estimates. In 2008, 2,896 patent infringement actions were filed, with median annual damages ranging from \$2.2 million to \$10.6 million, according to a recent report by PricewaterhouseCoopers. Ocean Tomo estimates that about half in the tech industry are brought by nonpracticing entities. Others put the figure above 70%. far less expensive to settle

Ryan and the tech companies that he fights in court agree on one thing: Patent litigation is costly, even for the victor. "Litigation by the nonpracticing entities costs the industry billions of dollars per year," says Horacio Gutierrez, Microsoft's deputy general counsel. Ryan calls it "very inefficient," saying it costs each side \$10 million to \$15 million over years, before a verdict is even reached. More than a decade ago, Cognex spent \$5 million successfully defending itself in a patent-infringement case related to bar code technology. Had it opted to settle, the company would have spent just 5% of that total, says Todd Keebaugh, vice-president of legal affairs at Cognex. In 2004, Acacia entered into an agreement with Bloomberg LP, parent of Bloomberg BusinessWeek, to license digital content-transmission technology. A growing number of companies are taking a different path, joining so-called defensive patent aggregators such as RPX, which protectively buy up patents and then license them to member companies (see Tech Giants' New Way to Thwart Patent Suits). Ryan says more companies have become willing to sit down and negotiate directly, before a case lands in court. "With several large companies, we have ongoing business discussions rather than having to litigate," he says, without identifying any. "We keep litigation for the patents that we can't agree on." Asked whether Microsoft would consider talking with Acacia to avoid litigation, Gutierrez says: "Yes. We have a strong history of negotiating and reaching reasonable settlements at fair value." Some larger companies have even asked Acacia to handle licensing on their behalf—seeking payment for their own patents in much the same way that Acacia represents small inventors and patent holders. "Some of the companies that were calling us bad names five years ago," says Ryan, "are now partnering with us."

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Legal Featured Article

February 02, 2010

Patent Trolls: Acacia is One Company Tech Giants Like to Avoid

By [Susan J. Campbell](#), TM**C**net Contributing Editor

(Editor's Note: A retraction to the inference below that RTI is a patent troll: Rates Technology Inc. is a practicing company in the technologies they have invented and owns their own patents - not fitting into the traditional definition of patent troll. According to company founder Jerry Weinburger, RTI has covered over 370 companies under its current patents and Weinburger rarely files patent suits. The company charges a one-time fee, not a recurring license.)

An intense look around any industry is likely to turn up companies that seem to operate on a different level. For the technology sector, that company is Acacia Research ([News - Alert](#)).

According to a recent Business Week [report](#), this company has filed at least 337 patent-related lawsuits in the 18 years since its inception.

Just what does the company make? Nothing.

Acacia's business plan consists of acquiring patents from inventors and seeking fees from companies that it claims infringe on those patents. The company has been quite successful in its pursuits, anticipating \$68.8 million in sales this year, up from \$34.8 million in 2006.

The company licenses technologies it does not design or distribute

and is classified as a nonpracticing entity. A number of tech companies refer to Acacia as a somewhat less friendly term: patent trolls.

"We're on the very front end in an explosion of frivolous litigation that's going to put a damper on innovation," said Brad Burnham in Business Week. Burnham is a partner at venture capital firm Union Square Ventures and highlights that about one-third of his firm's portfolio is being targeted by patent trolls.

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Legal Technology: Patent Trolls: Acacia is One Company Tech Giants Like to Avoid

It is clear that Acacia likes to spend time in court. The company has filed more patent cases than any other company and twice that of number two company Rates Technology. The company has noted that it has reached out-of-court settlements in roughly 95 percent of the lawsuits filed. In cases that actually go to trial, Acacia claims a win about half the time, according to CEO Paul Ryan.

For those on the winning side against Acacia, victory is especially rewarding. "Patent trolls are like neighborhood bullies," said Robert J. Shillman, CEO of machine vision-system maker Cognex in 2008. The company had recently won a struggle with Acacia.

"They can only be stopped by standing up to them, refusing to settle, and then challenging their patents in court," Shillman added.

According to critics, companies like Acacia try to enforce patents that are too broadly defined or that cover ideas that existed before the patent was even granted. For inventors who cannot go after tech companies who are trampling on their meaningful innovations, Acacia may be a valued partner.

James Malackowski, CEO of Ocean Tomo, an intellectual-property consulting firm, said in Business Week, "We're transitioning from a period of feudal lords where the only people who cared about intellectual property were large property owners who talked about it among themselves."

"There's been angst over patent trolls but it is not justified by materiality of economics." Patent-infringement cases cost an estimated \$1 billion to \$2 billion a year, a small fraction of the trillions of dollars companies spend each year on cross-licensing deals," Malackowski estimated.

While Acacia may offer solutions for inventors who have nowhere else to turn, some have turned to groups that can offer defense on their behalf. A growing number of companies that stand on the opposing side are trying to see the bright side of a potential partnership. Some have even partnered with Acacia to handle licenses on their behalf.

"Some of the companies that were calling us bad names five years ago," said Ryan, "are now partnering with us." This is one move that many of these companies never would have predicted.

In other Acacia news, the company recently [announced](#) that its Webmap Technologies LLC subsidiary has entered into a settlement and license agreement resolving litigation with Microsoft ([News - Alert](#)) Corporation. The agreement resolves patent litigation, Civil Action Case No. 09-C-104-C, pending in the United States District Court for the Eastern District of Texas.

Susan J. Campbell is a contributing editor for TMCnet and has also written for eastbiz.com. To read more of Susan's articles, please visit her [columnist page](#).

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